

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS**

**TYLER DIVISION**

**DATE:** December 7, 2011

**JUDGE**  
LEONARD DAVIS

**COURT REPORTER**  
Shea Sloan

**Law Clerk:** Eman Sojoodi

<b>JUSTACOMM-TEXAS SOFTWARE LLC</b>  <b>vs.</b>  <b>AXWAY, INC., et al</b>	<b>CIVIL ACTION NO: 6:10-CV-11</b> <b>Motions Hearing</b>
<b>ATTORNEYS FOR PLAINTIFF</b>	<b>ATTORNEYS FOR DEFENDANTS</b>
SEE SIGN IN SHEETS	

On this day, came the parties by their attorneys and the following proceedings were had:

**OPEN:** 9:43 a.m.

**ADJOURN:** 11:34 p.m.

<b>TIME:</b>	<b>MINUTES:</b>
9:43 a.m.	Court opened. Counsel for the parties announced ready for hearing
	Court addressed the parties regarding the <i>Markman</i> Order.
	Court asked the parties to make opening statements about what they believed to be issues for the hearing.
9:44 a.m.	Mr. Macon spoke on behalf of Plaintiff.
9:45 a.m.	Ms. Galvan spoke on behalf of Defendants.
9:48 a.m.	Mr. Macon presented additional argument and read a portion of a hearing transcript
9:49 a.m.	Ms. Galvan presented additional argument. Mr. Macon responded. The Court granted leave for the Plaintiff to amend its infringement contentions.
9:51 a.m.	Ms. Galvan indicated that the Defendants needed to amend their invalidity contentions and requested the 20 days as allowed under the local rules. Ms. Galvan also indicated that these amendments would cause their experts to have to change their reports.
9:52 a.m.	Mr. Macon indicated that the infringement contentions could be amended by December 16 and further indicated that the Plaintiff does not oppose the Defendants amending their infringement contentions. Ms. Galvan responded.
9:55 a.m.	The Court will move the trial date and will give the parties a new setting.

## PAGE 2 - Proceedings Continued

TIME:	MINUTES:
	Next, the Court took up issues and argument related to motions.
	The Court heard argument as to the Emergency Motion of Defendants SAS Institute, Inc. and Dataflux Corporation to Stay Proceedings in View of Imminent Appeal of Final PTO Action Invalidating Asserted Claims (Dkt. No. 625) and Defendants SAS Institute Inc. and Dataflux Corp.'s Motion for Leave to File Supplemental Briefing Providing Further Evidence in Support of Emergency Motion to Stay (Dkt. No. 691). Ms. Galvan and Mr. Huston argued on behalf of Defendants. Mr. Macon argued on behalf of Plaintiff.
10:15 a.m.	The Court took the matter under advisement
10:17 a.m.	The Court heard argument as to Pervasive's Motion for Summary Judgment of Noninfringement (Dkt. No. 759). Mr. Huston presented argument on behalf of Defendant. Mr. O'Neill responded on behalf of Plaintiff. The Court took the matter under advisement.
10:23 a.m.	Next, the Court heard argument on Defendants' Motion to Compel Further Deposition and Responses Regarding Communications with the Patent Office (Dkt. No. 460). Mr. Offor presented argument on behalf of Defendants. Ms. Cowart presented argument on behalf of Plaintiff. The Court denied the motion but will allow further deposition testimony.
10:34 a.m.	Court heard argument on the Emergency Motion to Reconsider Denial of SAS's Motion to Disqualify Plaintiff's Counsel (Dkt. No. 117) in View of Newly Discovered Evidence (Docket No. 479). Mr. Davis presented argument on behalf of Defendant. Mr. Macon presented argument on behalf of Plaintiff.
	The Plaintiff dropped willfulness. Court granted the Plaintiff's motion to drop Willfulness. Mr. Davis responded further.
	The Court took the matter under advisement.
10:54 a.m.	Court heard argument as to Juxtacomm-Texas Software, LLC's Opposed Motion for Leave to Serve Supplemental Expert Report of Michael Dansky as to Defendants Lawson Software, Inc. And Lawson Software Americas, Inc. (Dkt No. 666) and Motion to Strike the Damages Expert Report of Michael Dansky and to Preclude Juxtacomm from Introducing Damages Expert Testimony Relating to Lawson Trial (Dkt. No. 652). Ms. Cowart argued on behalf of Plaintiff. Mr. Dawson argued on behalf of the Defendants. The Court granted the Dkt. No. 666 and denied Dkt No. 652.
10:58 a.m.	The Court granted TIBCO's Motion for Leave to file Amended Answer and Counterclaims (Dkt. No. 847); Lawson's Motion to Amend/Correct Answer to First Amended Complaint (Dkt. No. 852) and Pervasive's Motion for Leave to File Fourth Amended Answer (Dkt. No. 861).
	The Court granted the following motions: Iona Motion for Leave to File Amended Answers (Dkt. No. 858); Dataflux Motion for Leave to File Second Amended Answer (Dkt. No. 865); and Vitria Motion to Amend/Correct Answer (Dkt. No. 876).
11:01 a.m.	Next, the Court heard argument on Lawson Motion to sever Defendants for Severance Followed by Separate Trials (Dkt. No. 853). Mr. Dawson argued on behalf of Defendants. Mr. Macon argued on behalf of Defendants.
11:06 a.m.	The Court denied the motion as moot at this time. The parties are to meet and confer as trial gets closer.

## PAGE 3 - Proceedings Continued

TIME:	MINUTES:
	<p>The Court denied as moot the following motions:  Opposed Motion to Amend Docket Control Order (Dkt. No. 724) ;  Emergency Motion for a Case Management Conference (Dkt. No. 738);  TIBCO Motion for Leave to File Additional Trial Exhibits (Dkt. No. 905) (Mr. Ward addressed this issue. The parties are to meet and confer on the issue); and  Plaintiff's Emergency Motion for a Case Management Conference (Dkt. No. 744).</p>
	<p>The Court addressed the parties' inability to work out disagreements.</p>
	<p>The Court requires that the parties use its Letter Briefing Rule for all remaining issues.</p>
	<p>The Court further denied the following as motions as moot without prejudice to re-file after new infringement and invalidity contentions are exchanged.:</p> <p>SAS and Dataflux's Motion for Summary Judgment of Invalidity of '662 Patent Claims 1-11 and 14-19 (Dkt. No. 445);</p> <p>Pervasive software, Inc.'s Motion for Summary Judgment of Invalidity of '662 Patent Claims 1-11 and 14-19 Dkt. No. 727)</p> <p>Plaintiff Juxtacomm's Motion for Partial Summary Judgment on Defendants' Claims of Inequitable Conduct (Dkt No. 751);</p> <p>Plaintiff's Motion to Strike the Expert Report of David McGoveran (Dkt. No. 753);</p> <p>Juxtacomm's Motion for Partial Summary Judgment on defendants' Assertion of the 28 U.S. C. § 1498 (A) "Government Contractor's Defense" (Dkt. No. 801);</p> <p>Dataflux Corp. Motion for Summary Judgment (Dkt. No. 802);</p> <p>SAS Motion for Summary Judgment (Dkt. No. 805);</p> <p>Dataflux Motion to Strike Portions of the Rudd Experts Reports (Dkt. No. 807);</p> <p>Lawson Motion for Partial Summary Judgment of No Infringement Under the Doctrine of Equivalents (Dkt. No. 810);</p> <p>Lawson Motion for Partial Summary Judgment of No Indirect and No Willful Infringement (Dkt. No. 813);</p> <p>Juxtacomm's Motion to Strike the Report of Craig W. Thompson on Non-infringement and Related Testimony (Dkt. No. 814);</p> <p>Vitria Technology, Inc.'s Motion for Partial Summary Judgment of No Willfulness and Indirect Infringement and No Actual Notice (Dkt. No. 825);</p> <p>Vitria Technology, Inc.'s Motion for Summary Judgment of Noninfringement (Dkt. No. 831);</p> <p>Juxtacomm's Motion to Strike Declaration of Mark Schneider (Dkt. No. 923).</p>

## PAGE 4 - Proceedings Continued

<b>TIME:</b>	<b>MINUTES:</b>
	The Court Granted TIBCO's Motion for Partial Summary Judgment of No Willful Infringement (Dkt. No. 827) based on the Plaintiff's withdrawal of its willful infringement claim.
11:23 a.m.	Court heard argument on the Emergency Motion for Case Management Conference (Dkt. No. 738). Ms. Cowart argued on behalf of Plaintiff. Ms. Galvan argued on behalf of Defendants.
	The Court denied Dkt. No. 738 as moot.
11:26 a.m.	The Court denied all motions in limine as moot. The parties are to re-file the motions. The Court encouraged the Defendants to coordinate filing joint motions.
11:29 a.m.	Ms. Galvan asked the Court to note a typographical error in the claim construction order. Court will review.
	Pretrial conference and trial date will be rescheduled. There will not be a pretrial conference next week and trial date will be rescheduled.
11:30 a.m.	The Court inquired as to the parties' mediator. Mr. Macon indicated that Judge Faulkner would be working with the parties.
11:34 a.m.	Court adjourned.

Courtroom Deputy: Jan Lockhart